

Message

From: Hurlid, Kathy [Hurlid.Kathy@epa.gov]
Sent: 6/5/2020 8:34:46 PM
To: Calli, Rosemary [Calli.Rosemary@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]; Siegal, Tod [Siegal.Tod@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]
CC: Chemerys, Ruth [Chemerys.Ruth@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Nagrani, Kavita [Nagrani.Kavita@epa.gov]; Laycock, Kelly [Laycock.Kelly@epa.gov]; McGill, Thomas [Mcgill.Thomas@epa.gov]; Jaikaran, Bianca [Jaikaran.Bianca@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: Quick Tribal Lands definition question

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Have a good weekend everyone.

From: Calli, Rosemary <Calli.Rosemary@epa.gov>
Sent: Friday, June 05, 2020 3:20 PM
To: Armor, Suzanne <Armor.Suzanne@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Cc: Chemerys, Ruth <Chemerys.Ruth@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Jaikaran, Bianca <Jaikaran.Bianca@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
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Internal, deliberative, not for release under FOIA

Hi, everyone – Many of you will have seen that Florida is going ahead with NOC publication on Monday. I checked in on what that means for the tribal lands question and learned that the approach was just to remove the definition from the rule language altogether. (Simma, this is an even newer update from when I reached out earlier.)

Ex. 5 Attorney Client (AC)

~ Rosemary

Rosemary (Hall) Calli
Section Chief, Wetlands & Streams Regulatory Section
Aquatic Ecotoxicologist
U.S. Environmental Protection Agency, Region IV

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Calli.Rosemary@epa.gov

From: Armor, Suzanne <Armor.Suzanne@epa.gov>
Sent: Wednesday, June 3, 2020 3:54 PM
To: Siegal, Tod <Siegal.Tod@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Cc: Chemerys, Ruth <Chemerys.Ruth@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Jaikaran, Bianca <Jaikaran.Bianca@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>
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Thanks, Tod. I'm looping in my ORC Indian law colleague, Bianca Jaikaran, for her awareness, and Mita Ghosh, Region 4 ORC's Water Law Office Chief.

As always, Tod's analysis is directly on-point, and I support his suggested abbreviated statement below for FDEP's consideration.

Ex. 5 Attorney Client (AC)

-Suzanne



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From: Siegal, Tod <Siegal.Tod@epa.gov>
Sent: Wednesday, June 3, 2020 3:20 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Cc: Chemerys, Ruth <Chemerys.Ruth@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: Quick Tribal Lands definition question

Ex. 5 Attorney Client (AC)

Tod Siegal

U.S. EPA, Office of General Counsel
Cross-Cutting Issues Law Office
202-564-5552

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Wednesday, June 03, 2020 3:13 PM
To: Siegal, Tod <Siegal.Tod@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Cc: Chemerys, Ruth <Chemerys.Ruth@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
Subject: RE: Quick Tribal Lands definition question

This is so helpful, Tod, thank you. It looks like additional conversation may be needed. Any objections if I shoot this to FDEP just to give them an initial sense as to our thinking?

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
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From: Siegal, Tod <Siegal.Tod@epa.gov>
Sent: Wednesday, June 3, 2020 2:51 PM
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Cc: Chemerys, Ruth <Chemerys.Ruth@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>; Armor, Suzanne <Armor.Suzanne@epa.gov>
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Thanks Simma. I have a number of questions about the language. I'm adding Suzanne Armor (ORC Indian law counsel) so she'll be aware of this issue.

Ex. 5 Attorney Client (AC)

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Happy to discuss further. Thanks.

Tod Siegal
U.S. EPA, Office of General Counsel
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202-564-5552

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Wednesday, June 03, 2020 2:04 PM
To: Siegal, Tod <Siegal.Tod@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>
Cc: Chemerys, Ruth <Chemerys.Ruth@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>
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All,

Stephanie Gray with FDEP just called and said they had just received the request below from the Seminole Tribe. They said they would be happy to incorporate it into their rule if it's ok with EPA, but defer to us. They would like to know whether they can incorporate it by Thursday evening, if possible, when they have to submit their draft rule. Is it possible for us to say by tomorrow whether this definition is:

1. acceptable for FL to use
2. not acceptable, or
3. acceptable with edits or warrants discussion?

Tod, I am forwarding to you in particular, as I assume if it's ok with Tod, most of the rest of us will be ok with it?

Thanks so much for your attention.

Thank you for the update and thank you again for allowing the Seminole Tribe an opportunity to review and provide comments on the draft Biological Assessment. Michelle and I have had a chance to confer with the Seminole Tribe's other council on the materials you provided us regarding a proposed definition of "Tribal lands or Tribal waters" as used in **Proposed Rule 62-331, F.A.C. and the 404 Applicant's Handbook**.

The Seminole Tribe would recommend utilization of the following definition for "Tribal lands or Tribal waters":

"Tribal lands or Tribal waters" shall mean all such lands and waters that are: 1) within the exterior boundaries of a federal Indian reservation, regardless of title status; 2) within Florida and considered Indian Country under 18 U.S.C. Section 1151, no matter where located; and 3) all lands/waters owned by a Tribe^[1], the health and safety of which are impacted by the lands and waters regulated by the Florida Department of Environmental Protection under the State 404 Program.

We are happy to make ourselves available to discuss the proposed definition and any questions you may have on the Seminole Tribe's comment letter submitted May 28th on the draft Biological Assessment.

Regards,

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^[1] "Tribe" is defined within the 404 Rules to mean "any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation."

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